

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:ITA:B01

PLR-129219-07

Date:

August 28, 2008

In Re:

EIN:

TY:

LEGEND:

Foreign Parent =

F Sub 1 =

U.S. Parent =

Seller =

F Sub 2 =

Target =

Sub 2 =

Buyer =

Holdco =

Company A =

Company B =

State X =

Country Y =

M Business =

a =

b =

c =

d =

e =

f =

g =

h =

x =

y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Dear

This is in reply to your letters dated June 14, 2007, January 11, 2008, March 20, 2008, and April 16, 2008, requesting rulings on certain transactions leading up to a spinoff transaction that occurred on Date 7 (the “Date 7 Spinoff”). This letter supersedes our letter to you dated July 5, 2008. Previously, you had requested and obtained rulings (PLR-124345-06) on different issues arising from this same Date 7 transaction. Concurrent with this letter ruling, we are issuing a separate letter ruling (PLR-129202-07) addressing certain other issues raised by these same events.

The information submitted for consideration in the current ruling request is summarized below. The legended terms used in the prior letter ruling are used herein, where appropriate, and retain the meaning assigned to them in the prior letter ruling.

Foreign Parent is a publicly traded Country Y corporation and is the parent of a multinational group of companies.

U.S. Parent is a State X corporation and the common parent of an affiliated group that files consolidated returns. All of U.S. Parent’s outstanding stock is owned by F Sub 1, a Country Y entity wholly-owned by Foreign Parent. F Sub 1 elected to be treated for federal tax purposes as a disregarded entity of Foreign Parent, effective as of the date of its formation.

Seller is a State X corporation and a second-tier subsidiary of U.S. Parent. Before the transactions herein described, Seller owned a percent of the stock of Target corporation. Target has b wholly-owned U.S. subsidiaries (Target and its U.S. subsidiaries will be referred to hereafter as the “Target Subgroup”). F Sub 2, a second-tier Country Y subsidiary of Foreign Parent, owned the remaining c percent of Target stock.

Buyer is a Country Y entity wholly-owned by Foreign Parent. Buyer elected to be treated for federal tax purposes as a disregarded entity of Foreign Parent. Buyer did not engage in any activities prior to the transactions described herein.

On Date 1, Foreign Parent announced that it planned to reorganize its M Business through reorganizing those corporations that were conducting the M Businesses. Target corporation, the members of the Target Subgroup, and various foreign subsidiaries of Foreign Parent are engaged in the M Businesses. Pursuant to its planned reorganization, Foreign Parent transferred these entities to a newly incorporated Country Y holding company ("Holdco"), which became the parent of all the entities conducting the M Businesses (the "M Business Group"). Foreign Parent then distributed Holdco on Date 7, along with the M Business Group, to its shareholders.

Prior to the Date 7 Spinoff, Foreign Parent consummated the following transactions in furtherance of the spinoff:

- (i) Foreign Parent activated Buyer, a shelf entity. Buyer elected to be treated as a disregarded entity for U.S. tax purposes pursuant to § 301.7701-3(c), effective as of Date 3. Foreign Parent contributed sufficient cash to Buyer to fund the acquisition of Target stock, as described in paragraph (iv), below.
- (ii) On Date 4 and Date 6, Sub 2 (a member of U.S. Parent's consolidated group and a sister company of Seller), entered into the Retiree Benefit Agreements ("RBAs") with a member of the Target Subgroup, wherein Sub 2 agreed to be responsible for the future payments of certain contingent retirement liabilities of the Target Subgroup, which liabilities included the following benefits: medical, life insurance and nonqualified deferred compensation, with respect to Target Subgroup employees who retired before Date 2 (collectively, the "Retiree Benefits").<sup>1</sup>
- (iii) On Date 8, Seller and Sub 2 entered into a written agreement, in which Seller agreed to pay for the costs of the Retiree Benefits as well as the costs of administering those payments (Retirement Benefit Funding Agreement, or "RBFA"). The agreement required seller to pay Sub 2 for any payments made by Sub 2 under the RBAs, including payments made before Date 8.
- (iv) Under the terms of the stock purchase agreement ("SPA"), entered into by Seller and Buyer, Seller sold on Date 5 its a percent of Target stock to Buyer for d dollars. This amount constituted f percent of the consideration paid by Buyer for the stock of Target. Also, on Date 5, F Sub 2 sold its c percent of Target stock to Buyer for e Euros.

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<sup>1</sup> The federal income tax treatment of the assumption of certain benefits of Company A and Company B employees pursuant to the RBAs is not included in the scope of this ruling request.

- (v) Pursuant to the SPA, Seller and a subsidiary agreed to indemnify Buyer for specified x type and y type obligations of the Target Subgroup. Seller agreed to indemnify Buyer for g percent of certain x type liabilities of members of the Target Subgroup. Seller funded this obligation by a payment to its subsidiary, which assumed responsibility with respect to the x type liabilities and also entered into a separate supplemental indemnity agreement with a Target subsidiary with respect to the x type liabilities. Seller also agreed to indemnify Buyer for h percent of certain y type obligations of the members of the Target Subgroup. The obligation to indemnify the Target Subgroup for the costs of satisfying contingent x type and y type liabilities is capped at the amount that Seller received for the Target stock. The parties to the SPA agreed that any payments under these indemnity agreements would be treated as adjustments to the purchase price of the Target stock.
- (vi) Pursuant to Section 8.7 of the SPA, Buyer, Target, and members of the Target Subgroup agreed to pay to Seller the amount of any tax benefit inuring to Buyer, Target, or the members of the Target Subgroup, resulting from an accrual or payment by Seller, Sub 2, or any of Seller's affiliates with regard to those obligations of any member of the Target Subgroup stemming from the RBAs. Pursuant to Section 8.7(d) of the SPA, the parties to this agreement agreed that any such payments for such tax benefits would be treated as adjustments to the purchase price of the Target stock.
- (vii) On Date 7, Foreign Parent transferred the stock of Buyer, which owned the Target Subgroup, to Holdco, a recently activated foreign "shelf entity," and then on that same day distributed Holdco stock to its shareholders (the "Date 7 Spinoff").

Seller incurred a loss as a result of the sale of its Target stock. See PLR-124345-06.

Under the facts provided, Sub 2's promises to the Target Subgroup to undertake the responsibility for the payment of the Retiree Benefits obligations, in conjunction with Seller's promise to Sub 2 to pay for these amounts, will be treated as promises having been made in exchange for a constructive issuance by Target of its stock. The constructively issued Target stock will be treated as if it had the same terms and conditions as the Target stock historically owned by Seller.

### **Taxpayer's Representation**

After subtracting out the portion of the purchase price of Target paid as consideration to Seller for undertaking the x and y indemnities, the aggregate difference between the remaining purchase price per share paid to Seller and the purchase price per share paid

to F Sub 2 represents an additional consideration paid to Seller solely with regard to the Benefits obligations undertaken by Seller (and its affiliate Sub 2) pursuant to the RBAs.

## Rulings

Based solely on the information submitted, this office rules on the above described transactions as follows:

- (1) Except as provided in the concurrently-issued letter ruling (PLR-129202-07), no income, expense, gain, or loss will be recognized by Target or any member of the Target Subgroup as a result of any of the payments made by Sub 2 with regard to the Retiree Benefits, as well as the associated expenses, which are required under the RBAs and paid for by Seller pursuant to the RBFA. Nor, except as provided in the concurrently-issued letter ruling, will Target or any member of the Target Subgroup recognize any income, expense, gain, or loss as a result of the agreement between Sub 2 and members of the Target Subgroup under which Sub 2 agrees to assume the responsibility for making payments with regard to the Retiree Benefit obligations of Target and other members of the Target Subgroup. Section 1032 or Section 118 of the Internal Revenue Code.
- (2) On Date 4, additional stock of Target was constructively issued by Target in exchange for Sub 2/Seller taking on the responsibility for the payment of the Retiree Benefit obligations of each of the members of the Target Subgroup. In characterizing for tax purposes each of the above-described payments, such payments are related back to the Date 4 transaction, which was the date that Sub 2 agreed to assume the responsibility for the payment of the Retiree Benefits in exchange for a constructive issuance of stock of Target. As a result, Seller will be treated as if its basis in its Target stock had been increased in the amount of each of the payments made by Sub 2 with regard to the Retiree Benefits and in the amounts of its expenses associated therewith (which amounts are to be paid for by the Seller). As a result of these increases to Seller's basis in its constructively issued Target stock, which will be treated as if it was sold to Buyer (along with the Target stock historically owned by Seller), Seller will be entitled to an additional capital loss in the amount of each payment. Seller's entitlement to these additional capital losses results from treating these payments as if they had created additional basis to the Seller in its Target stock for the purpose of determining Seller's gain or loss from its Date 5 sale of its Target stock. Sections 1001 and 1222.
- (3) Any payments made by Seller or its subsidiary pursuant to Sections 7.2 and 7.3 of the SPA, in which Seller and its subsidiary agreed to pay amounts of certain x type and y type contingent liabilities of Target, will be treated as adjustments to the purchase price that Buyer paid Seller for the Target stock. As Seller or its

subsidiary makes such payments with regard to these contingent liabilities, each payment will, for the purpose of tax characterization, relate back to the date of Seller's sale of its Target stock, so that each payment will be treated as if it had been a reduction to the amount realized by Seller from its sale of its Target stock. Seller will thus be entitled to treat such reductions to amounts realized as capital losses from that stock sale. Sections 1001 and 1222.

- (4) Any payments received by Seller from Buyer, Target, or a member of the Target Subgroup, pursuant to the agreement under Section 8.7 of the SPA, in which Buyer, Target, and members of the Target Subgroup agreed to pay Seller any amount of tax benefit inuring to Buyer, Target, or a member of the Target Subgroup that results from any of those payments made on account of the obligations of Buyer, Target, or a member of the Target Subgroup with regard to the Retiree Benefits obligations, will be treated as adjustments to the purchase price received by Seller with regard to its sale of its Target stock. Such adjustments to purchase price will reduce the capital loss recognized by Seller under Ruling 2. Sections 1001 and 1222.
- (5) Except as provided in Ruling 2, neither Sub 2 nor Seller will realize any net income or gain, nor will either Sub 2 or Seller be entitled to any loss or expense deductions, on account of Seller's payments made to Sub 2, pursuant to the Retiree Benefit Funding Agreement, in order to pay for the amounts required to be paid by Sub 2 with regard to the Target Group's Retiree Benefit obligations.

### **Caveats**

We express no opinion concerning the federal tax consequences of the proposed transactions under any other provision of the Code or regulations, or concerning any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings. In particular, we express no opinion as to (a) whether the Date 7 Spinoff of Holdco qualifies for non-recognition of gain or loss under § 355; (b) the application of § 1.337(d)-2 to the sale of the Target stock by Seller, a member of the U.S. Parent consolidated group; and (c) whether either Sub 2's agreement with Target to undertake the responsibility for paying the Retiree Benefit obligations of the Target Subgroup (along with Seller's agreement with Sub 2 to pay for these amounts), or Sub 2's/Seller's subsequent payments in satisfaction of these obligations, in exchange for a deemed issuance by Target of additional Target stock, qualifies as a non-recognition exchange under section 351 or qualifies as a section 1001 taxable exchange, but with no gain or loss realized in either event. We also express no opinion as to the timing of when Seller is entitled to claim the capital losses resulting from the above-described additions to Seller's basis in its Target stock that result from payments made on account of the Retiree Benefit obligations of the Target Subgroup. That is, we express no opinion as to whether Seller should be allowed to claim such increases to basis, and the resulting capital loss deductions, at the time

Seller pays Sub 2, or at the time Sub 2/Seller actually pays the retirees in satisfaction of its obligation with regard to the Retiree Benefits, or at the time that Sub 2/ Seller's obligation to pay the retiree accrues.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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Andrew Irving  
Senior Counsel, Branch 1  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: